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Submission to

The Royal Commission

In the matter of the Workmens Compensation Act

P a r t I

The Honorable Mr.Justice George A. McGillvray

Commissioner.-

By

Jan Ostrowski (& Mrs. S.Ostrowski)
of Gryffin Lodge,Huntsville ,Ontario.

The need to reviev The Workmen's Compensation Act of Ontario in order to keep pace with the progress of social and and scientific changes is obvious.

Only basic principles of the law last for centuries. Particular acts need revamping and revision from time to time.-

The Workmen's Compensation Act - a contemporary social legislation of this century - is undergoing continuous testing and requires the revision of the Act itself,and its implementation and interpretation more frequently.

In this respect, the decision to appoint a Royal Commission to investigate the operation of the Workmen's Compensation Act and to make recommendations was well founded. It will be a great advantage to the services provided by the W.C.B. if these recommendation will answer the popular feeligs and need of changes.

This brief is limited to the following points of the agenda of the hearing on the 26th of September-1966.

1) Appeals on question of Law to the court.
2) Administrative appeals within the Board structure.
3) Access to Board Records by directly interested parties.

A p p e a l

Section 72 (1) gives exclusive jurisdiction to the Board to examine into,hear and determine all matters and questions arising under Part One of the Act - and to any matter or thing in respect of which any power, authority or discretion is conferred

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upon the Board. Further more - any action or decision of the Board is final and conclusive and is not open to question or review in any court, and no proceedings by or before the Board shall be restrained by injunction, prohibition or the other process or proceeding in any court or be removable by certiorari or otherwise into any court.

The above prpvision of the Act takes the W.C.B. out of the any legal system of this Country. It creates a state within a state without responsibility to any court of Canada.

It is a citizen's right in the democracy to have protection of independent Courts against any injustice. Denying this protection violates this basic right - and is unconstitutional. (1)

Subsection (3) & (4) give the Board authority to reconsider any matter that has been dealt with by it or to rescind, alter or amend any decision or order previously made. In all these actions the Board is not bound to follow legal precedent. All this can be done not only " in absentia " of the party directly involved - and without notifying this party - acting only upon the report of any of its officers and any inquiry - or even by some other person appointed to make the inquiry.- (2) Furthermore, any such appointed person has all powers of the Supreme Court of Ontario.-(Sections 75 (2) and 65.

Section 76 - provides that an order of the Board(for any payment of money made under the authority of Part 1 of the Act) filed with the clerk of any county or district court, beco-

mogen order of that court, and when so filed may be enforced as a judgement of that court. All this may be carried on by the Board by post without the necessity of personal attendance at any office.- Any other order or judgment of a court can be appealed in due course - this rubber - stamped filing is final and conclusive, not open to any appeal, restrain, injunction - or any other court action. And all this is obtained without any participation or even notification of the interested party.- The modern version of obtaining by mail - order a judgement of the court - without any control or critical examination by the court provided in the Act. (3)

Administrative Appeals within the Board Structure.

It is a matter of common sense to assume, that no reasonably sound appeal could be made without knowing the facts, evidence, medical opinion and other reasons of the decision.
All proceedings by the W.C.B. are kept secret, and, as one brief presented to the Royal Commission, admits, the workman, until he decides to appeal to the Appeal Tribunal he" has no idea why his claim failed ". And even then all he can get is a " summary of evidence " prepared by the W.C.B. - another word the party who naturally opposes the appeal.- (4)

Access to Board Records by directly interested parties.

The attached correspondence with W.C.B. (Exhibits N 1 - 9.) indicates clearly, that the refusal of the access to the Board records - (in this case only to the X-Ray films) is based on

the section 97 (1) of the W.C.B. Act. and that the Board's medical records are considered privileged,and therefore subject to production only on the order of the Supreme Court of Ontario. Chairman of the Board in his interview with the press of May 30, 1966 (Globe & Mail May 31,1966) stated,that " Doctor's reports on Board's patients are privileged in the same way that any doctor - patient relationship is privileged". This interpretation of the Board privilege is basically erroneous. Privilege in a doctor's case means nothig else but that a doctor can not disclose any information regarding his patient - without the patient's consent. It certainly does not mean that doctor can refuse to disclose all medical facts and information to the patient himself To the contrary, (5)

> "The court frequently states that the relation between the physitian and his patient is a fiduciary one and therefore the physitian has an obligation to make a full and frank disclosure to the patient of all pertinent facts related to his illness" (Law Medicine Research Institute, Boston University,1963,page 217) (6)
>
> "The duty of a surgeon to disclose to a patient the relevant facts of the case and to deal honestly with him as to the nature and importance of an operation or other treatment, has already been referred to" (Malpractice Liability of doctors and Hospitals.Common Law and Quebec Law by William C.J. Meredith, Q.C. -1956.page 142) (7)

By the refusal to disclose the medical facts - the Board usurps the right of a patient - depriving him of his good right to have

information regarding his health condition, of his natural right to decide about the way of his treatment. Simultaneously, the Board exercise doctors duty, in a manner, that could be considered as a professional misconduct, by a phisician. We feel, that medical facts can not be considered privileged to the patient. He has right to use this privilege and the Board has no legal or moral right to conceal the medical facts from the injured workman. (2) The W.C.B. goes even further, than witholding medical facts from the workman :

1) by preventing in certain cases the attending surgeon from giving full information to the patient and
2) by refusing attending doctor access to the Board's files.

This practice brings in some cases disastrous consequences to an unaware patient - as in fact in the case of Mrs S. Ostrowski.

Medical facts of utmost importance for her future were all concealed in the files of the Board but never communicated and never could have been avaible to her.-

They come to the open only as a production of dr. Lotto's file during his examination for discovery.

Section 97 (1) of the Act is beeing used by the Board as an excuse in refusing access to the X-rays in Board's posession.

This leaves patient without any possibility of checking what and how has been done to his body, leaves him at the mercy of an information very often casual, superficial and inacurate information given usually by medically unqualified employee of the Board

How many cases of disability aggravation, how much unnecessary suffering, how many thousand dollars could be saved, if workman, as a patient, would be well informed about real extent of his disability, about future dangers, that could be avoided ? (2)

One of the most remarkable examples of the discretion power confered on the Board is demonstrated by the Section 24 of the Act. (3) This section provides, that any special surgical operation or special medical treatment for a workman may be furnished, in the interest of the accident fund - if such an operation (or treatment) is the only mean of avoiding heavy payment for permanent disability.

Money - not workman's welfare and future counts... (4)

In light of the above section no one should be suprised, that files are considered so secret, that even Coroner's Jury , in the Board's opinion has no right to request their files. (5)

S U M M A R Y

We respectfully make following submissions:

1) To establish the right to appeal on questionof Law to the Courts.
2) to determine the right of interested party to be present at all hearings during the administrative review or appeals within the Board structure.
3) To establish that directly interested parties has access to the Board records.
4) To clarify the interpretation of privilege regarding medical facts of injured workman.
5) To include in the Section 24 of the Act, a clause establishing as a first justification for a special surgical treatment - the welfare of the injured workman.

Mrs.S.Ostrowski
Box 628
Huntsville,Ont.

May 4,1966

(1)

Mr.B J.LEGGE,Chairman
The Workmen's Compensation Board
90 Harbour Street
Toronto 1,Ont.

Claim Number 3189435.

Dear Sir,

Refering to the letter from Finance Dept. W.C.B. of March 4, 1966 advising about awarding additional $59.75 per month due to " the permanent disability,resulting from your accident of December 11,1952" I wish to make following statement:

I was able to work before the operation of October 1st,1963. and my only complain was the pain in my left hip joint. I was reffered by the Medical Department to Dr. W.Lotto, who advised me that only a simple surgery (McMurray Osteotomy) can bring good result and relief.

Instead I was crippled and totally disabled by Dr.Lotto operation,exposed to unnecessary physical,mental sufferings general deterioration of my health,and finally discharged from hospital as fit to resume my work - without bony union.

This operation was by far more disastrous to me that the original accident of December 1952.

Instead of receiving assistance and help I had to travel to New York to learn the true result of Dr.Lotto's surgery. Only after that,and only due to my own endeavours - W.C.B. decided to ask Dr.W.R.Harris to perform a corrective surgery which took place on July 15,1964. This operation partly corrected rotation deformity,restored the valgus position and slightly reduced shortening of my left leg.

From Dr.Harris statement I understand that he does not plan any further operative(or other) treatment except removing the nail plate from the hip joint.

I wish to make it clear,that I consider my present deformities as a result of Dr. Lotto operation,against whom I have malpractise case in the Supreme Court of Ontario.

Under these circumstances I can not accept any pension, which may be considered or interpreted as the normal result of the original accident of December 1952 - unless it will be clear,that W.C.B. is aware of my court action, and awarding disability pension do not intend in any way affect or prejudice the court action and responsibility of Dr. Lotto.

Finally,I am asking weather W.C.B. will continue my treatment in order to correct damages done by Dr.Lotto operation and restore my condition as to give me best possible chances for my future - at least not worse I had before the operation of October 1st 1963.

I am prepared to any resonable extend of sacrifice and suffering to get improvement. No disability pension,whatever it may be,can even slightly compensate for my ruined life. But I am resolved to do everything possible to improve ~~my~~ my present condition.

It is my basic right as a human beeing,to ask if W.C.B. is going to help me. If not - I will have to look for help elsewhere.

All my previous letters concerning this matter has been totally disregarded - and I did not receive any answer. Also my request to have X-rays in posession of W.C.B. permitted to be used for diagnosis purposes abroad and eventual further treatment were denied by the Legal Dep. By this action W.C.B. not only refuses to help me in my own efforts to improve my health condition - but also is putting a cloak of mystery over the medical facts which obviosly should be available to a patient at any time and from any institution-particularly a Public Institution.

I am holding received pension cheques until I will get a reply to my present request. In answering this letter will You, Mr. Chairman, please direct the proper Department to inform me regarding the base used to calculate my pension,and the percentage of disability applied.

The above text sufficently explains the reason why I am addressing this letter directly to you, Mr. Chairman.

Should this request be left again unanswered - I will presume that it did not reach you Mr. Chairman, and I will be compelled to find other ways to get to the heart of this particular problem in which much wider implication are involved than my personal rights.

Yours truly,

(Mrs.S.Ostrowski)

B. J. LEGGE, Q.C.
CHAIRMAN

THE WORKMEN'S COMPENSATION BOARD
ONTARIO

(2)

90 Harbour Street,
Toronto 1, Ontario.

May 11th, 1966.

Mrs. Slawomira Ostrowski,
Box 628,
Huntsville, Ontario.

Dear Mrs. Ostrowski:

Claim: 3189435

Thank you for your letter of May 4th, 1966 concerning the permanent disability award recently issued in your claim.

The court action mentioned is, of course, your private matter, and I note that your solicitor has previously been in contact with our Legal Officer and understands that medical reports to this Board are privileged. I have, therefore, asked the Board's General Counsel, Mr. E. Lane, to write to you in this matter.

You are entitled to the full benefits provided by The Workmen's Compensation Act for the disability related to your accident. I have asked our Officer, Mr. Hales, in North Bay to see you personally about the basis for the permanent disability award. Mr. Hales will be in touch with you almost immediately.

After these explanations and discussion, if you are still dissatisfied with the benefits accorded to you, then you have the right to appeal to the Review Committee. This is a panel of

Continued ---

senior officers who will independently review your appeal and the full circumstances in your claim.

I trust this information and action will be of assistance to you.

Yours very truly,

Bruce Legge

BJL:dw

THE WORKMEN'S COMPENSATION BOARD

90 HARBOUR STREET, TORONTO 1, ONTARIO TELEPHONE 362-3411

GENERAL COUNSEL E. M. LANE | SOLICITOR J. O. SIMPSON | SOLICITOR W. R. RIDDELL | SOLICITOR P. B. CURRIE

3

May 13th, 1966

Mrs. Slawomira Ostrowski,
Box 628,
Huntsville, Ontario.

Dear Mrs. Ostrowski:

Re: Claim No. 3189435

Your letter of May 4th addressed to Mr. B. J. Legge has been referred to me. I have been asked to confirm the advice previously given your solicitor that the Board's medical records are considered privileged and therefore subject to production only on the order of the Supreme Court of Ontario. You will appreciate that the Board cannot permit itself to become involved in a private civil action. The medical reports and x-rays on our files are collected and prepared for the purposes of considering questions of entitlement to medical aid and compensation. I am sure that you will appreciate that the privileged status of all such reports and communications is a basic necessity for the continuing public service that the Workmen's Compensation Board provides.

I trust this information is what you require.

Yours truly,

E. M. Lane,
General Counsel.

EML:mc

(Mrs.) S.Ostrowski
Box 628
Huntsville.Ont.

May 21.1966.

(4)

Mr.B.J. Legge.Q.C.
Chairman.
The Workmans Compensation Board
90 Harbour Street. Toronto 1. Ont.

Claim:3189435

Dear Sir,

Thank you for your letter of May 11th,1966.
Your Officer from North Bay Mr. Hales was seeing me on May 12 th.
Your letter arrived on the following day.
As you notice,the information regarding the percentage of disability and base used to calculate my pension - was the last question in my letter of May 4.1966.
I hope Mr. Hales will report my feelings in this matter - and that I will receive the official clarification from the W.C.B.
Unfortunately the most important questions of my letter were left without answer. They are:

1) Is W.C.B. prepared to continue my treatment to bring me back at least to my pre - operation condition?

2) Why I am refused the use of the X-rays of my own body?

I do not ask for your files,reports or correspondence.
All I want - is to have, at my own expence, copies of all X-rays - beginning 1952.- in order to have with me the history of my accident and treatment,while going abroad for consultation.
This request is not contradicting a "necessity for the continuing public service " - as your General Counsel Mr. Lane suggests in his letter of May 13,1966, arguing his refusal to make X-rays in question available even and only in purpose to facilitate medical advise and eventual treatment outside of Ontario.-
Is it " in public interest " to prevent me from obtaining treatment?
This reasoning is inhuman. In fact it means that while I have court action (which,as you mentioned is my " Private matter ") I should be denied medical evidence,and by the same have to suspend indefinitely any chance of further treatment of a complicated case like my.
It implies also very clearly,that if I had no case

of malpractice - this medical evidence could be available.
In short - as long as I dare to sue a doctor - I will not get from W.C.B. any assistance in my endeavours to improve my health.
I have more than serious doubts that this stand is dictated by " a necessity for the continuing Public Service that the W.C.B. provides ".
I am sure, that my view will not only be shared but also very differently classified by public opinion.

I also fail to understand how making a cripple of a working person is so indifferent to W.C.B. as to refuse assistance so essential for further treatment, and how this could be in conformity with section 52 of the W.C.B. Act.
I wish to point out that time is by far to important factor in any treatment - and in my case the delay can preclude certain kind of treatment which could be applied now, before it is to late.
Therefore I request once more only simple and clear answer to the following Questions :

1) Is W.C.B. prepared to continue in getting me back to work ?

2) Is W.C.B. prepared to assist me in lessening or removing any handicap related to my accident of 1952 and crippling operation of Oct.1st 1963.?

3) Will W.C.B. provide me at my own expence copies of all X-rays, beginning 1952.?

Yours truly

Slawomira Ostrowski

S Ostroeski
Box 628
Huntsville, Ont.

May 24. 1966.

(5)

Mr. E.M. Lane
General Counsel
The Workmen's Compensation Board
90 Harbour Street. Toronto 1. Ont.

Claim 3189435

Dear Sir,

Refering to your letter of May 13,1966 I would like to have one additional information:
Which section of the Workmen's Compensation Act provides, that the Board's medical records are considered privileged even in relation to the person directly interested - namely injured workman or insured partner, as the case may be.
Thank you in advance,

Yours Truly

Slawomira Ostrowski.

B. J. LEGGE, Q.C.
CHAIRMAN

THE WORKMEN'S COMPENSATION BOARD
ONTARIO

(6)

90 Harbour Street,
Toronto 1, Ontario.

June 2nd, 1966.

Mrs. Slawomira Ostrowski,
Box 628,
Huntsville, Ontario.

Dear Mrs. Ostrowski:

Claim: 3189435

Your further letter has been noted and in addition, I have reviewed the report from our Rehabilitation Officer, Mr. G. Hales, after his contact with you on May 12th, 1966.

Your pension represents sixty-five per cent disability and is based on the rate of personal coverage which you had requested at the time your accident was sustained. This was $1,200.00 per year and under the provisions of the Act, benefits are calculated based on earnings at the time of accident.

When you were examined by Dr. W. R. Harris on December 9th, 1965 it was not considered further treatment was then necessary. It was explained that further surgical treatment would not be advisable for at least two years following your last operation. We will consider any recommendations by Dr. Harris with regard to improving your physical disability which has resulted from the accident of December 11th, 1952. You, of course, have continuing entitlement in your claim and we will be guided on the basis of future medical reports on your condition.

Continued ---

I understand that you have written to Mr. E. M. Lane, General Counsel, and I have also asked that he consider the questions in your letter to me pertaining to legal matters when he again corresponds with you.

In my previous letter, I explained your right of appeal to the Review Committee if you are still dissatisfied with the benefits accorded to you. Your appeal to the Review Committee would be carefully and independently considered in the appeal system.

I trust this is satisfactory.

Yours very truly,

B J Legge

BJL:dw

THE WORKMEN'S COMPENSATION BOARD

90 HARBOUR STREET, TORONTO 1, ONTARIO TELEPHONE 362-3411

GENERAL COUNSEL E. M. LANE | SOLICITOR J. O. SIMPSON | SOLICITOR W. R. RIDDELL | SOLICITOR P. B. CURRIE

June 7th, 1966

7

Mrs. Slawomira Ostrowski,
Box 628,
Huntsville, Ontario.

Dear Mrs. Ostrowski:

Re: Claim No. 3189435

In reply to your letter of May 24th asking for information on the provisions of The Workmen's Compensation Act which establish the privilege referred to in our previous correspondence, may I quote in full for your assistance Section 97 of the Act.

> " 97. (1) No officer of the Board and no person authorized to make an inquiry under this Part shall divulge or allow to be divulged, except in the performance of his duties or under the authority of the Board, any information obtained by him or that has come to his knowledge in making or in connection with an inspection or inquiry under this Part.
>
> (2) Every person who contravenes any of the provisions of subsection 1 is guilty of an offence and on summary conviction is liable to a fine of not more than $50."

I trust this information is what you require.

Yours truly,

E. M. Lane,
General Counsel.

EML:mc

Mrs.S.Ostrowski
Box 628
Huntsville,Ont.

June 10. 1966.

(8)

Mr.E.M. Lane
General Counsel
The Workmen's Compensation Board
90 Harbour Street.Toronto 1.Ont.

Claim Number 3189435.

Dear Sir,

In reply to your letter of June 7.1966 I wishe to make clear that:

1. I am familiar with Section N. 97 of the W.C.B. Act. Quoting the text does not provide the information I requested,simply because this section does not apply in my case. I am not asking for the disclosure of any information obtained by W.C.B. official during an inquiry. I am asking for X-rays of my own body made not during any inquiry - but in course of my treatment and not by any persons autorized to make an inquiry but by Radiologists - during their rutine work.-
2. Even if this section could be applied in this case - Board has right to autorize any person to make disclosure.
3. Refusal of my request violates my human rights, prevanting me from seeking further treatment. This refusal clearly contradicts section 52 of The W.C.B.

4. In his letter of June 2nd1966 The Chairman of the W.C.B. informed me, that you will repply to the two questions contained in my letter of May 21,1966. I feel you have not done so.

5. When the right to appeal exists the appealing party has right to examine all facts,evidence,opinion etc. Persistent refusal of pertinent information renders an appeal less than useless, when the reason and the related facts of the decision I have to appeal are secret. This kind of appeal system is not known in any democratic procedure.

6. The appeal system from one panel of the W.C.B. - to another committee of the same Board,without right to appeal to any

Civil court,and without right to know facts,leaves W.C.B. procedings out of any legal system of any Country.
Only comparison I can think of are the police commission and appeal commission of the same police in Nazi occupied countries during the secong war.
There is no mention in the Act if apellant can be present at the session of Reviev Committee.

7. The recent correspondence with The Chairman of the W.C.B. and with you, as General Counsel,indicates, that some other serious reasons exist to hide the true facts from me - an insured and twice injured working person - and therefore my efforts to get Board assistance in my fight to have my health improved are unrealistic.
This compell me to take different course in pursuing my aim to obtain fair treatment as a disabled person and a human beeing.

Yours truly

(MRS.) S.Ostrowski.

Mrs.S.Ostrowski
Box 628
Huntsville.Ont.

June 18.1966

(9)

Mr.B.J.Legge.Q.C.
Chairman,Workmans Compensation Board.
90 Harbour Street
Toronto 1, Ont.

Claim;3189435

Dear Sir,

Thank you for the information regarding the degree of my disability and the base applied to calculate my pension. I do not think that decision of the Board on this two points is a just one, and I will exercise my right of appeal,as suggested in your last letters of May 11th.1966 and June 2nd.1966. In your last letter you mentioned about asking Mr. Lane, General Counsel,to consider and answer my questions pertaining to legal matters.
I wish to inform you, that I had been not granted this privilege by Mr. Lane. As I was persistently refused cooperations I was asking for in my recent correspondence I took the liberty in my letter of June 10.1966 to notify Mr.Lane,that I consider further efforts to obtain required assistance from W.C.B. as unrealistic,and therefore I am compelled to take different course in pursuing my aim to obtain fair treatment as a human beeing - and a twice disabled person. Thank you for your courtesy in paying attention and answering my letters but since that different course has been already entered upon I will not take more of your precious time with my correspondence .

Yours truly

/S Ostrowski /